



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Tomasz
Petrykiewicz, Department of the
Treasury

Administrative Appeal

CSC Docket No. 2018-2344

ISSUED: AUGUST 3, 2018 (HS)

Tomasz Petrykiewicz, an Auditor 2, Taxation with the Department of the Treasury (Treasury), appeals the determination of his salary upon his promotion to his current title, pursuant to *N.J.A.C. 4A:3-4.9*.

By way of background, the appellant was appointed to the title of Auditor 3, Taxation, effective February 5, 2005. In response to the appellant's February 1, 2012 request for a classification review of his position, the Division of Agency Services (Agency Services) determined that the proper classification of the appellant's position was Auditor 2, Taxation. As a result, the appellant was provisionally appointed, pending promotional examination procedures, to the title of Auditor 2, Taxation, effective February 25, 2012. Upon his provisional appointment, the appellant's salary increased from \$69,474.22 (salary range P22, step eight) to \$74,195.28 (salary range P25, step six). *See N.J.A.C. 4A:3-4.9*.

An examination for the title of Auditor 2, Taxation (PS2369U), Treasury, was announced with a closing date of August 21, 2012. The resulting list of 100 eligibles, including the appellant tied as the 77th ranked eligible, promulgated on April 4, 2013 and expired on March 21, 2017. On May 21, 2013, a certification (PS131230) was issued to the appointing authority for the appellant's work location, and it contained the names of 32 eligibles, including the appellant whose name appeared as the 26th listed eligible. The appointing authority returned the certification appointing the 11th, 12th and 13th listed eligibles, effective July 27, 2013. The appellant was not reachable for appointment and was returned to his permanent title of Auditor 3, Taxation. Upon his return to his permanent title, the

appellant's salary decreased from \$77,780.36 (salary range P25, step seven) to \$75,079.13 (salary range P22, step 10) pursuant to *N.J.A.C.* 4A:3-4.10.

Subsequently, the appellant filed a second request for a classification review of his position, alleging that the proper classification of his position was Auditor 2, Taxation. The Civil Service Commission (Commission) agreed that the proper classification of his position was Auditor 2, Taxation. See *In the Matter of Tom Petrykiewicz* (CSC, decided April 15, 2015). Therefore, he was provisionally appointed, pending promotional examination procedures, to that title, effective April 19, 2014. Upon his provisional appointment, the appellant's salary increased from \$75,079.13 (salary range P22, step 10) to \$77,780.36 (salary range P25, step seven). See *N.J.A.C.* 4A:3-4.9. On July 12, 2014, the appellant's salary increased from \$77,780.36 (salary range P25, step seven) to \$79,141.49 (salary range P25, step seven) pursuant to a contractual, across-the-board percentage increase. On August 9, 2014, the appellant reached his anniversary date and became eligible for a salary increase within the salary range. Thus, the appellant was advanced to step eight of salary range P25, and his salary was set at \$82,034.37. See *N.J.A.C.* 4A:3-4.5.

On February 5, 2015, a certification (PS150130) was issued from the PS2369U eligible list to the appointing authority for the appellant's work location, and it contained the names of 18 eligibles, including the appellant whose name appeared as the 11th listed eligible. The appointing authority returned the certification appointing the first and fourth listed eligibles, effective April 18, 2015 and May 30, 2015 respectively. The appellant was again not reachable for appointment and was again returned to his permanent title of Auditor 3, Taxation. Upon his return to his permanent title, the appellant's salary decreased from \$82,034.37 (salary range P25, step eight) to \$76,393.06 (salary range P22, step 10) pursuant to *N.J.A.C.* 4A:3-4.10.

Subsequently, the appellant filed a third request for a classification review of his position, alleging that the proper classification of his position was Auditor 2, Taxation. Agency Services determined that the proper classification of the appellant's position was Auditor 2, Taxation. Therefore, he was provisionally appointed, pending promotional examination procedures, to that title, effective March 5, 2016. Upon his provisional appointment, the appellant's salary increased from \$76,393.06 (salary range P22, step 10) to \$79,141.49 (salary range P25, step seven). See *N.J.A.C.* 4A:3-4.9. The appellant was later granted a retroactive date of permanent appointment to the title of Auditor 2, Taxation, effective March 5, 2016. See *In the Matter of Tomasz Petrykiewicz* (CSC, decided July 13, 2017).

On appeal to the Commission, the appellant claims that he was placed on step eight at a salary of \$82,034.37 upon his provisional appointment to the title of Auditor 2, Taxation on April 19, 2014 due to his being at the maximum of his

previous salary range for more than 39 pay periods.¹ Thus, he contends that upon his appointment on March 5, 2016, he should have also been placed on step eight of salary range P25, not step seven. The appellant requests this relief so that his salary step placement upon his appointment on March 5, 2016 matches the step he claims to have been placed on upon his April 19, 2014 appointment, *i.e.*, step eight. As evidence, the appellant presents a partial history of his salary that begins at August 9, 2014.

The appellant also contends that his situation is similar to that presented in *In the Matter of William Gallagher* (CSC, decided November 5, 2015), in which the Commission granted Gallagher's appeal of the determination of his salary upon promotion, pursuant to *N.J.A.C.* 4A:3-4.9. There, the Commission noted that Gallagher was appointed to the title of Auditor 2, Taxation, effective December 14, 2002. In response to a request for a classification review, it was determined that the proper classification of Gallagher's position was Auditor 1, Taxation, effective September 7, 2013. Upon his provisional appointment, his salary increased from \$82,362.22 (salary range P24, step 10) to \$88,488.93 (salary range R27, step eight). Gallagher had been on step 10 of salary range P24 for more than 39 pay periods, and since the salary increase after workweek adjustment was less than two increments in his previous range, he received an additional increment in the new range. *See N.J.A.C.* 4A:3-4.9(d). Gallagher applied for the examination for the title of Auditor 1, Taxation (PS8544U), Treasury, and was tied as the 12th ranked eligible. On May 29, 2014, a certification was issued to the appointing authority and included Gallagher as the ninth listed eligible. Gallagher was reachable for appointment. However, the appointing authority returned Gallagher to his permanent title of Auditor 2, Taxation, and as a result his salary decreased from \$90,037.50 (salary range R27, step eight) to \$83,803.57 (salary range P24, step 10) pursuant to *N.J.A.C.* 4A:3-4.10. Subsequently, in response to a second request for a classification review, it was determined that the proper classification of his position was Auditor 1, Taxation, effective December 13, 2014. Upon this appointment, Gallagher's salary increased from \$83,803.57 (salary range P24, step 10) to \$86,848.47 (salary range R27, step seven). However, since it had not been an additional 39 pay periods since Gallagher's return to his permanent title of Auditor 2, Taxation, *N.J.A.C.* 4A:3-4.9(d) was not applied in determining his salary. Gallagher appealed asserting that he was improperly placed on step seven of salary range R27 upon his appointment on December 3, 2014, and that by doing so he was penalized for filing two requests for a classification review of his position. Due to the unique circumstances presented in the matter, the Commission relaxed the provisions of *N.J.A.C.* 4A:3-4.9(d), and counted all of Gallagher's time spent on step 10 of salary range R27, before and after his 2013 provisional appointment to the title of Auditor 1, Taxation. By doing so, Gallagher was not adversely affected for filing the requests for a classification review, and then not being appointed from the first certification. Moreover, Gallagher did not gain any salary advantage from this

¹ The appellant appears to suggest that *N.J.A.C.* 4A:3-4.9(d) was applied.

action, other than being placed on the same step as he was previously placed on upon his initial appointment to the title of Auditor 1, Taxation. Consequently, Gallagher was placed on step eight of salary range R27, effective December 13, 2014, the effective date of the second classification determination.

It is noted that although given the opportunity, the appointing authority did not submit any information or arguments in this matter.

The Salary Schedules, dated January 1, 2011, in effect at the time of the appellant's February 25, 2012 provisional appointment to the title of Auditor 2, Taxation were, in part, as follows:

	RANGE P22	RANGE P25
INCREMENT	\$2,430.81	\$2,814.98
STEP FIVE	\$62,181.79	\$71,380.30
STEP SIX	\$64,612.60	\$74,195.28
STEP SEVEN	\$67,043.41	\$77,010.26
STEP EIGHT	\$69,474.22	\$79,825.24

The Salary Schedules, dated July 13, 2013, in effect at the time of the appellant's April 19, 2014 provisional appointment to the title of Auditor 2, Taxation were, in part, as follows:

	RANGE P22	RANGE P25
INCREMENT	\$2,455.11	\$2,843.13
STEP SIX	\$65,258.69	\$74,937.23
STEP SEVEN	\$67,713.80	\$77,780.36
STEP EIGHT	\$70,168.91	\$80,623.49
STEP NINE	\$72,624.02	\$83,466.62
STEP TEN	\$75,079.13	\$86,309.75

The Salary Schedules, dated July 12, 2014, in effect at the time of the appellant's March 5, 2016 appointment to the title of Auditor 2, Taxation were, in part, as follows:

	RANGE P22	RANGE P25
INCREMENT	\$2,498.08	\$2,892.88
STEP SIX	\$66,400.74	\$76,248.61
STEP SEVEN	\$68,898.82	\$79,141.49
STEP EIGHT	\$71,396.90	\$82,034.37
STEP NINE	\$73,894.98	\$84,927.25
STEP TEN	\$76,393.06	\$87,820.13

CONCLUSION

N.J.A.C. 4A:3-4.9 provides, in pertinent part, that:

- (a) Unless a different salary adjustment is established in a collective negotiations agreement, the following provisions shall be applied when employees are appointed to a title with a higher class code, except that in no event shall such adjustment result in a higher salary than that provided for in this section.
- (b) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range . . . This subsection shall apply when the following conditions are met:
 1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;

* * *

- (c) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (b) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.
- (d) When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, and the salary increases after workweek adjustment would be less than two increments in the employee's previous range, the employee shall receive an additional increment in the new range, providing the employee is not already at the maximum of the new range.

* * *

In this matter, the appellant argues that the Commission should follow its decision in *Gallagher, supra*, and place him on a higher salary step, effective March 5, 2016. Nevertheless, it must be noted that the appellant's situation is not exactly the same as Gallagher's. Specifically, in *Gallagher*, the Commission found that Gallagher was adversely affected for filing the requests for a classification review of his position, and then not being appointed from the first certification. In this

regard, Gallagher had *already completed* 39 pay periods on step 10 (*i.e.*, the maximum) of the salary range for his permanent title of Auditor 2, Taxation. When he received his first provisional appointment to the title of Auditor 1, Taxation, he received an additional increment in the new salary range resulting in step eight pursuant to *N.J.A.C. 4A:3-4.9(d)* since the salary increase after workweek adjustment was less than two increments in his previous range. Although Gallagher was reachable for appointment from the first Auditor 1, Taxation certification, he was returned to his permanent title of Auditor 2, Taxation with his salary set at step 10. When Gallagher received his second provisional appointment to the title of Auditor 1, Taxation, *N.J.A.C. 4A:3-4.9(d)* was not applied in determining his salary since it had not been an *additional* 39 pay periods since his return to his permanent title of Auditor 2, Taxation. Thus, Gallagher's salary was set at step seven, one step *lower* than the step at which his salary was set upon his first provisional appointment to the title of Auditor 1, Taxation. Due to the unique circumstances presented, the Commission relaxed the provisions of *N.J.A.C. 4A:3-4.9(d)* and placed Gallagher on step eight. Notably, the Commission indicated that Gallagher gained no salary advantage other than being placed on the *same step* as he was previously placed on upon his first provisional appointment to the title of Auditor 1, Taxation.

There are salient differences between Gallagher's and the appellant's respective situations. Unlike Gallagher, the appellant had *not* completed 39 pay periods at step 10 of the salary range for his permanent title of Auditor 3, Taxation at the time of his provisional appointment to the title of Auditor 2, Taxation on April 19, 2014. The appellant's apparent suggestions to the contrary, that he had done so and that *N.J.A.C. 4A:3-4.9(d)* was applied in setting his salary upon his April 19, 2014 appointment, are not borne out by the record. Rather, the appellant's salary, set at \$77,780.36 (salary range P25, step seven), was determined according to *N.J.A.C. 4A:3-4.9(b)* and *N.J.A.C. 4A:3-4.9(c)*. The appellant's salary of \$82,034.37 (salary range P25, step eight) effective August 9, 2014, highlighted by the appellant, simply resulted from the appellant's reaching his anniversary date and becoming eligible for a salary increase within the salary range. In addition, while Gallagher could have been appointed from the first Auditor 1, Taxation certification as he was reachable, the appellant was *not* reachable for appointment from the May 21, 2013 and February 5, 2015 Auditor 2, Taxation certifications and he had to be returned to his permanent title each time. Further, Gallagher, at the time of his second provisional appointment to the title of Auditor 1, Taxation ended up at a salary step that was one step *lower* than the step at which his salary was set upon his first provisional appointment to the title of Auditor 1, Taxation. This resulted from the fact that an *additional* 39 pay periods at step 10 had not passed before Gallagher's second provisional appointment to the title of Auditor 1, Taxation, though Gallagher had in fact completed 39 pay periods at step 10 at the time of his first provisional appointment and had already had *N.J.A.C. 4A:3-4.9(d)* applied in setting his salary at the time of the first provisional appointment. The

only salary advantage the Commission's remedy afforded Gallagher was placement on the same salary step that he had been placed on at the time of his first provisional appointment. By contrast, the appellant, at the time of his appointment to the title of Auditor 2, Taxation on March 5, 2016, was in fact placed at the *same* salary step he had been placed on at the time of his provisional appointment to that title on April 19, 2014, at which time there was no basis to apply *N.J.A.C. 4A:3-4.9(d)* as previously noted. Consequently, for the foregoing reasons, the same good cause does not exist in this matter. Furthermore, the Commission indicated that the remedy in *Gallagher* was limited to the facts of that case and did not provide precedent in any other matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 1ST DAY OF AUGUST, 2018



Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

Christopher S. Myers
Director
Division of Appeals and Regulatory Affairs
Written Record Appeals Unit
Civil Service Commission
P.O. Box 312
Trenton, New Jersey 08625-0312

c. Tomasz Petrykiewicz
Douglas J. Ianni
Kelly Glenn
Records Center